IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE AVERILL, § § No. 426, 2012 § § Plaintiff Below-Appellant, § Court Below—Superior Court v. § of the State of Delaware, WILLIAM C. BRADLEY, JR. et al., § in and for New Castle County § C.A. No. N10C-07-128 Defendants Below-§ § Appellees. Ş

> Submitted: January 4, 2013 Decided: February 15, 2013

Before **HOLLAND**, **BERGER**, and **JACOBS**, Justices.

ORDER

This 15th day of February 2013, upon consideration of the parties' briefs and the record below, it appears to the Court that:

- (1) The appellant, Wayne Averill, filed this appeal from the Superior Court's decision, dated June 25, 2012, which dismissed Averill's remaining claim against the appellees on the ground that the statute of limitations had expired. Upon review, we conclude that the factual finding underlying the judgment is erroneous. The Superior Court's judgment, therefore, must be reversed.
- (2) Averill filed a civil complaint against the defendants in 2010 alleging that he had been sexually abused by defendant William Bradley between July 1990

and September 1998 and again in April of 2008. On July 16, 2010, the Superior Court summarily dismissed Averill's complaint as barred by the statute of limitations. On appeal, we affirmed in part the Superior Court's summary dismissal of Averill's 1990-98 claims on the ground that the period of limitations under the statute applicable to those claims, 10 Del. C. § 8145, had expired. We remanded the matter to the Superior Court for a further determination of whether Averill's 2008 claims were barred by 10 Del. C. § 8119, the statute of limitations applicable to those claims.

- (3) On remand, the Superior Court determined that the last alleged act of sexual abuse occurred on April 25 or April 26, 2008. Thus, Averill had until April 26, 2010 to file his complaint. The Superior Court found that Averill did not file his complaint until May 11, 2010. His claims were thus barred by the applicable two-year statute of limitations. This appeal followed.
- (4) In his opening brief, Averill asserts that he filed his complaint and praccipe on April 12, 2010 but that a court clerk later crossed-out the time stamp and wrote "VOIDED Incorrectly Filed" on his documents and returned the documents to him by mail. Apparently, the documents were returned without being docketed because Averill's praccipe did not include an address for defendant

¹ Averill v. Bradley, 2011 WL 3652473 (Del. Aug. 18, 2011).

Bradley, although addresses were included for three other named defendants.²

- (5) This Court previously has noted that it is not the function of the clerk of a court to pass on the sufficiency of an initiating document, such as a complaint or notice of appeal, which is tendered to the court for filing.³ Whether a complaint and praecipe is legally sufficient to invoke a court's jurisdiction and toll the statute of limitations is a question of law to be determined by a judge upon notice and an opportunity to be heard.⁴ In this case, the court clerk should have docketed Averill's complaint and praecipe on the day it was received, April 12, 2010.⁵ Whether the complaint and praecipe filed on April 12, 2010 were legally sufficient "to put the judicial machinery in motion" was a matter for the trial judge to determine.
- (6) The Superior Court erroneously concluded that Averill's complaint was filed on May 10, 2010. Because Averill actually filed his complaint and praecipe on April 12, 2010, prior to the expiration of the statute of limitations, we must reverse. In doing so, we do not address whether Averill's April 12, 2010

² The State acknowledges that Averill attempted to file his complaint and praecipe on April 12, 2010, and the documents were rejected as nonconforming.

 $^{^3}$ See Kostyshyn v. State, 2010 WL 3398943 (Del. Aug. 30, 2010) (citing Graves v. General Insur. Corp., 381 F.2d 517, 519 ($10^{\rm th}$ Cir. 1967)).

⁴ *Id.* (citing United State v. Neal, 774 F.2d 1022, 1023 (10th Cir. 1985)).

⁵ See Bryant ex rel. Perry v. Bayhealth Med. Ctr., 937 A.2d 118, 123 (Del. 2007) (finding it was not appropriate for a court clerk to refuse to docket a complaint for technical deficiencies).

⁶ *Id.* at 124 (citing Russell v. Olmedo, 275 A.2d 249, 250 (Del. 1971)).

complaint and praecipe were legally sufficient to toll the statute of limitations as to any or all of the defendants.⁷ Moreover, we do not address any of the alternative grounds argued by the State to support dismissal of Averill's complaint because those issues, though raised below, were not addressed by the Superior Court in the first instance.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

of limitations as to the defendant whose address was not supplied).

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⁷ Compare Sines v. Wyatt, 281 A.2d 499 (Del. Super. 1971) (holding that praecipe with incorrect address was legally sufficient to toll the statutes of limitations) with Biby v. Smith, 272 A.2d 116 (Del. Super. 1970) (holding that praecipe with missing address was insufficient to toll the statute